

# ICSA

Independent Cellular Services Association

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August 11, 1995

Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

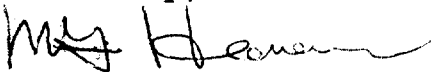
Re: Petitions for Reconsideration in CC Docket No. 92-115  
Ex Parte Discussion

Dear Mr. Caton:

This is to provide notice, pursuant to Section 1.1206 of the Commissions's Rules, that we have mailed the attached letter to Ms. Kenney regarding our motion for reconsideration for Part 22.919 of the FCC rules.

This letter to Ms. Kenney and its attachments were requested at a July 27, 1995 meeting that we attended with members of the Commission, CTIA, TIA, and C2+.

Sincerely,



Michael G. Heavener  
President MTC Communications  
Vice-President ICSA  
For CellTek

Attachments

# ICSA

Independent Cellular Services Association

P.O. Box 2171 • Gaithersboro, MD 20886 • Phone 301-926-1891 • FAX 301-670-0234

August 11, 1995

Regina M. Keeney, Esquire  
Chief of the Wireless Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, DC 20554

Dear Ms. Keeney,

Subject: Ex-Parte Meeting regarding Part 22.919 - ESN  
rule and Extension Cellular Phones

We were disappointed that you were unable to stay for the meeting on July 27, 1995 regarding our Ex-Parte Presentations which addressed our petitions for reconsideration of the ESN rule in Part 22.919. We are forwarding a copy of this letter to Mr. Caton, Secretary of the Commission to officially put this letter and its attachments on the record. For that record, attendees included representatives from the FCC, McCaw/AT&T Cellular, TIA, C2+, MTC Communications, CellTek, ICSA, Motorola, Ericsson, Japan Radio, Matsushita Electric and the Department of Justice Antitrust Division. This letter summarizes the major points that we concluded from the meeting and we have attached a rewrite of Part 22.919 as your staff requested:

1. According to Paragraph II A. of the agenda and opening comments of Mr. B. C. "Jay" Jackson, Jr. of the Commission, Part 22.919 and related comments apply to the carriers who are cellular licensees and to "the design criteria to be met by manufacturers as a condition of type acceptance ...". The rules do not apply to firms such as ourselves who do cellular phone reprogramming. CTIA and the comments in the current part 22.919 suggest that we cannot change ESN's because we somehow void type acceptance. In our petitions and during our presentation, we quoted the Commission's own rules for type acceptance which permit minor technical changes to radio transmitters without voiding type acceptance. The ESN is merely transmitted information and in no way affects the power, frequency, modulation, etc. of the transmitter which are contained in the technical standards

cited in the type acceptance rules. We are using for the the same programming access ports that cellular companies and service facilities have been using for many years to change ESN's in the field. The largest cellular manufacturer, Motorola, call this feature "Express Service" or "ID Transfer". We are still willing to work with you on the language of the rule even though we don't think it applies to us or our associates.

2. Mr. Michael Altschul stated that CTIA could not find any major disagreement with the technical report filed earlier by Dr. Richard Levine who testified for the extension phone companies. Dr. Levine's report concluded at least three major points: a. that phones programmed with duplicate ESN and MINS do not "burden or harm the network or other subscribers" if the phones are used properly; b. "There is no problem of incompatibility or interference with anti-fraud techniques"; c. "the use of emulated extensions provides a technologically superior method for providing extension service". We believe that all in attendance agreed that there is no technical basis for the commission not permitting an ESN change in the field if a customer requests an extension phone or a needs a loaner phone.

3. TIA representing the manufacturers stated that they dislike the current rule 22.919 and believe it is written so strictly that it is impossible to comply with for normal repair and software updates of cellular telephones in the field. Both TIA and our members don't believe the rule will have any significant impact on fraud because there are 30 million exisiting phones which are not covered by the new rule . Mr. Raclin(for TIA) stated that if the rule is left in place then the manufacturers will be unable to provide field software updates and repairs which will result in phones being thrown away resulting in major customer inconvenience and expense. Incredibly CTIA stated that they are aware of this issue and are willing to create these problems for their subscribers -- as we testified, CTIA and their members stand to make billions of dollars of revenue from rolling our their own extension phone service. We believe that they want to monopolize this market and this is the real reason they are opposed to customer authorized ESN changes. With the extensive theft-of-airtime problems so often brought up by CTIA and its members, the ESN has proven to be totally ineffective as a security measure.

4. CTIA submitted two extensive volumes of material at the beginning of the meeting which basically demonstrated their assault on a number of small firms performing ESN modifications. CTIA and several carriers using the FCC rules under reconsideration have obtained Federal Court injunctions to put these firms out of business. In our meeting, CTIA attacked C2+ on several occasions using deceitful tactics such as referring to criminals who were caught stealing cellular services as "using C2+ type technology". In fact the technology is adapted from that used by the manufacturers to read and write the ESN at the end of the manufacturing process or to change the ESNs in the field. In all of the thousands of pages submitted in this reconsideration and the 6 cases in the large binder passed out at the meeting, there was not a single example where C2+ or any other extension firm altered a cellular phone used in the stealing of airtime. Despite this fact CTIA and McCaw continued to try to confuse the Commission by mixing true fraud with extension service provided to legitimate customers who request the service. It was pointed out by us that CTIA had succeeded in having the Congress revise Title 18 of the U.S. Criminal Code to make it a felony to alter phones to "free ride" on the cellular system. We believe this is more than adequate Federal regulation to deter true fraud.

5. There was extensive discussion relative to the extension phone service(MUSDN) that the carriers are offerings in a number of markets. We pointed out that the carrier's service is priced between \$18 and \$30 per month as contrasted by our service which averages about \$3 per month(one time cost amortized over 5 years). The carrier's extension service is termed MUSDN. It was pointed out that the carriers require that only one phone be powered on at a time; this is the same requirement that our members require of our customers. We also pointed out that under MUSDN as provided by the carriers only the primary phone can roam which is a clear violation of the commission's compatibility standards. All of our phones can roam. Furthermore MUSDN is available in only a few markets. Our service can be provided in ALL MARKETS large or small!

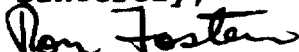
6. C2+ and MTC Communications pointed out that the Commission, CTIA and TIA failed since the mid '80's to enforce the rules that required all cellular telephones be designed to prevent the ESN from being changed. The rules dating back to the early 80's specified that should an ESN be changed then the phone would be rendered useless. This is

clearly not the case! As stated earlier the carriers and manufacturers have developed a process where they can easily change any ESN in the field. This technology is now available to anyone who wants to purchase it. With 30 million phones in the marketplace most of which can be reprogrammed in seconds, the FCC ESN rules would have virtually no impact on fraud. TIA agreed with us. Instead the industry needs to turn to PIN numbers, usage patterns and authentication to curb fraud and away from a failed dependency on controlling the ESN.

7. Finally, at the conclusion of the meeting, the Commission members requested that C2+ and our association/firms draft a set of rules that would be fair to all parties and submit to the Commission within two weeks. The Commission would then consider our suggestions for the reconsideration of the existing rules in Part 22.919. We have attached our ideas to this letter together with some comments which explain our logic for the rules we are suggesting. We believe that our proposed rules place a number of safeguards on the cellular extension service industry so that the firms providing this service will CONTINUE to provide an affordable service without contributing at all to fraud. In short, we can live with the existing rule provided paragraph a.) be clarified to mean that "in service" is powered on. Also paragraphs 60 to 62 in the comments, the FCC Public Notice, Report No. CL-92-3 issued in 1991 and the letter from John Cimko in 1993 to CTIA need to be struck or clarified to address only the ESN changes that are done fraudulently without the customer's permission.

We know the marketplace demands cellular extension service and therefore we believe that our service is technically and economically in the best interest of the public. It also adds a form of competition to the marketplace and we are convinced that this is why CTIA and the carriers have been so resistant to our service. We would like to thank you and the other members of the Commission for arranging this meeting and we are hopeful for a positive outcome for our petitions.

Sincerely,



Ron Foster

Combined response for CellTek, MTC Communications, and ICSA

Attachments

## Attachment A

### PROPOSED RULE SECTION 22.919

#### a.) Definitions

1.) ESN -- The Electronic Serial Number(ESN) is a 32 binary number that uniquely identifies a cellular customer's primary mobile transmitter to the cellular system to verify that he/she is a valid customer.

2.) Primary Phone -- Each primary cellular phone in use must have a unique ESN that was preassigned or installed at the factory. This ESN together with the MIN are the numbers that were registered with the carrier at the time of service activation. This ESN must not be changed except by the manufacturer or with written permission of the relevant carrier.

3.) Secondary Phone -- Each secondary phone must be programmed with the same information as the primary phone in 2.) above at the written request of the customer owning the primary phone. This phone can be used as an extension phone or as a loaner phone while the primary is being repaired. The secondary phones must be owned by the same person as the primary phone.

4.) Programming Service Provider -- This is the firm that reprograms a new ESN in each of the Secondary Phones.

#### b.) Operation of the Phones

Only one cellular phone, either the primary or a secondary, may be powered on at a time. This must be explained both verbally and in the written agreement between the owner of the primary phone and the programming service provider. Should the carrier detect that two or more phones with the same information are on at the same time, then the carrier may suspend service and require a fee for reactivation after notification.

#### c.) General

1.) A service agreement between the owner of the phones and the service provider must be signed by the owner of the primary phone. This record must contain all relevant information on the owner of the phones including name, address, telephone numbers, Primary ESN, old ESN for each secondary phone, information on two sources identification, makes and models

of phones, carrier and a copy of a valid service contract with the active carrier. These records must be maintained as long as the secondary phones are in operation. Upon request the relevant carrier may gain access to the information in this agreement.

2.) Each time a secondary phone is programmed, the primary phone customer must produce that phone in person, show a valid contract with a carrier, and provide proper identification. The firm providing the programming service must notify the carrier who provides the primary phone service that a secondary phone is being created. If there is a problem with the customer or the account then the programming service should be denied. The carrier must not take any punitive action against the customer or the firm providing the service nor create any delay in responding to the programming service provider notification.

3.) A tag with the new ESN must be placed along side the existing ESN plus the name, address and phone number of the firm providing the reprogramming service.

4.) Any company providing programming service of a secondary phone must have a valid business license and perform services within the geographic area served by the home carrier. Mail order service outside this area should not be allowed under this rule. As stated earlier, physical identification of the subscriber and the primary phone is required.

5.) Programming service companies performing this service should notify local carriers of their operation so that coordination of problems can be made.

6.) To assure proper operating conditions of the secondary phones the firms providing this service must have one employee on it's staff that has at a minimum a 3rd Class Radio Technician license. This license can be revoked should any fraud or other major problems with the reprogramming service be proven. The service firm must strictly follow the process outlined in this rule or a failure to do would be grounds for suspension.

7.) All equipment and software used for the purposes of reprogramming ESNs must have restricted access such as passwords or other security locks to prevent unauthorized or fraudulent use. The equipment/software used by the firms programming secondary phones must be under the direct control of the firm providing the service.

8.) All cellular telephones submitted for type acceptance within 6 months after this rule is published shall be designed to include the authentication standard xxxx.

9.) No individual or company shall modify, transfer, copy or alter an ESN emitted by a mobile cellular transmitter except as set forth in the above paragraphs a.) to c.). Any individual or company not in compliance with these subsections is in violation of the rule and the Act.



**Certificate of Service**

I hereby certify that a copy of the foregoing letter to Regina M. Keeney and all exhibits were mailed this 14 day of August , 1995 by first-class mail, postage prepaid, to the following parties:

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